

## In Memoriam

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### HON. LUCIEN SHAW,

Associate Justice of the Supreme Court of the State of California,  
1903-1921; Chief Justice of the Supreme Court of  
the State of California, 1921-1923.

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At a regular session of the Supreme Court held on June 6, 1933, the following proceedings were had in honor of the memory of the late Honorable Lucien Shaw, former Chief Justice.

At the opening of court, former Chief Justice Louis W. Myers addressed the court as follows:

May It Please the Court:

Since the last session of this court at Los Angeles, there has passed beyond the jurisdiction of all human courts a former Chief Justice of this court who had served for more than thirteen years as a judge of the Superior Court in and for the County of Los Angeles, and for more than twenty years on this Honorable Court, first as Associate Justice and later as Chief Justice. I refer to the late Lucien Shaw. During those more than thirty-three years of judicial service he contributed more, I think, to the clarification and settlement of the law of this State, to its development and up-building, and, most of all, to its integration, than can be credited to any other. By his utter devotion to duty, his unflagging diligence, his absolute integrity, financial, moral, judicial and intellectual, by his broad and profound knowledge of the law and the decisions, his capacity for clear-cut, logical analysis, his indomitable courage and his boundless zeal for the protection and promotion of the common welfare, he has provided an exemplar which will serve as an inspiration and guiding star for all of us who follow after.

The present Chief Justice has appointed a committee of lawyers to prepare a memorial to the memory of Judge Shaw, each of whom has been privileged at one time to work

shoulder to shoulder with him in the judicial service of the commonwealth. The personnel of the committee is as follows:

Honorable Curtis D. Wilbur,  
Honorable Frank H. Kerrigan,  
Honorable Matt I. Sullivan,  
Honorable M. C. Sloss,  
Honorable Warren Olney, Jr.,  
Honorable Charles A. Shurtleff,  
Honorable Frank G. Finlayson and

The speaker [Honorable Louis W. Myers], Chairman.

The memorial which I am about to read, with the permission of this court, was prepared by Honorable M. C. Sloss. Judge Sloss, greatly to his regret, finds it impossible to be present on this occasion and has requested me, as chairman of the committee, to present the memorial which he has prepared.

**IN MEMORY OF LUCIEN SHAW, ONE-TIME CHIEF  
JUSTICE OF THE SUPREME COURT OF  
CALIFORNIA.**

Lucien Shaw, a Justice of the Supreme Court of California for twenty years and Chief Justice during the last year or more of his service, passed away on March 19, 1933, in the eighty-ninth year of his life. This memorial is presented by a group of members of the bar, each of whom enjoyed the great privilege of sitting with him during his service on the bench of the Supreme Court, and all of whom take a solemn pride in this opportunity of giving formal testimony to their great admiration of his outstanding ability and public service as a judge, his spotless character, his unquestioned integrity and his unique contribution to their memories of a valued friendship.

He was born March 1, 1845, on a farm near Vevay, Switzerland County, Indiana. He was of Scotch and English descent. His father, William Shaw, was born in Paisley, Scotland, and came to America at the age of fourteen years. His mother, Linda C. Rous, was a native of Yorkshire, England, and, when she was seven years old, was brought to this country. Both the Shaw and the Rous families set-

tled in Switzerland County, Indiana. The boyhood and early youth of Lucien Shaw were spent on his father's farm. He attended school at Vevay, completing the course of study of the Academy, a school corresponding to high schools of today. He left home to take up the study of law at Indianapolis Law College, from which he graduated in March, 1869, after completing the course which occupied one year.

Lucien Shaw was married on July 29, 1873, to Hannah Hartley, and thus began a union of complete happiness and harmony which lasted until his death, a period of almost sixty years. Judge and Mrs. Shaw had but one child, a son, Hartley, who has been judge of the Superior Court of Los Angeles County since 1923, and has in that position earned the confidence, respect and esteem of the bar and the public.

Upon graduation from the law school he settled at Bloomfield, the county seat of Greene County, Indiana, and began the practice of law. At the outset, when his practice was not yet very lucrative, he occupied a part of his spare time in copying and abstracting instruments presented for record in the County Recorder's office. His first partnership was with T. A. Baker, under the firm name of Baker & Shaw. This firm having been dissolved he entered into a partnership with John S. Bays, the association taking the name of Shaw & Bays. In December, 1883, both members, with their families, moved to Los Angeles, California, where they remained only a few weeks, when they took up their abode and their practice in Fresno in this state. Mr. Bays soon decided to return to Indiana and Mr. Shaw formed a partnership with J. F. Wharton under the name of Wharton & Shaw, and this firm continued in practice until the summer of 1886, when the junior member returned to Los Angeles, where he formed another partnership with J. M. Damron. This firm (Shaw & Damron) continued practice in Los Angeles until March, 1889, when Lucien Shaw began the distinguished judicial career which occupied the rest of his active professional life.

The legislature of 1889 increased the number of judges of the Superior Court of Los Angeles County from four to six and Governor Waterman appointed Lucien Shaw to one of the two places thus created. In November, 1890, he was

elected for a full term of six years, and in 1896 was re-elected for a second like term. In 1902, upon the approaching expiration of his second full term, he was renominated by the Republican County Convention and a week or two later was nominated by the Republican State Convention for one of the two offices of Associate Justice of the Supreme Court of California which were to be filled at the election of November, 1902. The same Convention renominated W. H. Beatty, the incumbent Chief Justice and also named for the office of Associate Justice Honorable F. M. Angellotti, who later became Chief Justice. Between Judges Shaw and Angellotti, there grew up the warmest official and personal relation. When Judge Angellotti passed away in May of last year Judge Shaw wrote:

"We were associated as members of the court and also as members of the same department and were thus brought together more closely and there was never a break in our feeling of close friendship even to the last. I can say most emphatically I was never brought into so pleasant a relationship with a man in my life."

Judge Angellotti was elected Chief Justice of the Supreme Court for the term beginning January, 1915. He resigned in November, 1921, to resume private practice. Governor Stephens appointed Judge Shaw to fill the vacancy as Chief Justice, and he occupied that post until January, 1923, when his term expired. He was not a candidate for re-election, but retired to private life, seeking the repose which his long and active life had so well earned.

During the years of his service in the Superior Court, Judge Shaw acted in many important cases, both in his own county and in others. It was in this period that he began to establish his reputation as a pre-eminent authority on the law of waters and water rights in California, already a field of much importance in the economic life of this state.

The twenty years during which he sat on the bench of the highest court of California were, however, of larger significance in establishing his place among the greatest of the lawyers and judges who have graced the courts of California. Under the English and American system of jurisprudence, with its distinguishing characteristic of reliance upon the always persuasive and sometimes binding force of prior de-

cisions, the influence of the pronouncements of a judge of a reviewing court is not limited to the period of his judicial life. His rulings and opinions stand for all time as a guide to the judges and the lawyers who look to the books for authoritative statements of the law. As the inscription over the grave of Sir Christopher Wren in St. Paul's Cathedral, the supreme work of his genius as an architect, proclaims to the observer, "*Si monumentum requiris, circumspice,*" so with equal appropriateness it may be said that the monument of Lucien Shaw as a judge is to be found in over fifty volumes of the reported decisions of this court, running from 138 California to 190 California.

The opinions of which he was the author cover a wide range. They deal with almost every phase of the varied activities and interests of a populous and advancing commonwealth. His work in the Supreme Court covered a period when the increasing complexity of social and economic conditions presented many new legal and constitutional problems. He sought ever to adhere to the fundamental principles of individual rights, but recognized, at the same time, that changes in the social structure of community life justified legislative modifications in the common interests of all.

To list his important decisions would extend this memorial to undue proportions. A few of the most notable may be mentioned. *Chase v. Trout*, 146 Cal. 380, is a leading case on the extent and limits of the power of the legislature to validate assessment proceedings. *Matter of Miller*, 162 Cal. 687, sustained the validity of the California statute of 1911 establishing an eight-hour working day for women in most employments. *People v. California Fish Co.*, 166 Cal. 576, went with care and thoroughness into the power and authority of the state with respect to tide lands.

But the most vital and constructive contribution of Judge Shaw is found in the long line of decisions in which he expounded the law governing rights to the use of waters—a subject of ever-increasing importance in the semi-arid region of California. Cases like *Palmer v. The Railroad Commission*, 167 Cal. 168, and *Duckworth v. Watsonville Water Company*, 170 Cal. 425, were valuable in correcting current confusion regarding the limits of the rights which could be gained by notices of appropriation. Similarly, the opinion

in *Gallatin v. Corning Irrigation District*, 163 Cal. 405, defined more precisely the relation between riparian owners and appropriators with respect to the right to storm and flood waters of streams. The increasing resort to pumping from underground waters, particularly in the southern part of the state, gave rise to many difficult problems. In the oft-cited case of *Katz v. Walkinshaw*, 141 Cal. 116, Judge Shaw laid down the rules governing the rights of owners of land overlying a common supply of percolating water, and this decision has ever since been regarded as the foundation of the law of California on this difficult subject. Later decisions, such as *Burr v. Maclay Rancho Company*, 160 Cal. 268, expanded the doctrines of the Katz case, and applied them to different conditions. Mention should also be made of the learned and comprehensive address, entitled "The Development of the Law of Waters in the West," delivered by Judge Shaw in August, 1922, at a meeting of the American Bar Association in San Francisco. This paper, which traces the growth of the law of waters from the earliest days of American settlement in California, is printed in Volume 189 of the California Reports. It presents a most illuminative and instructive review of the history of Western water law, and illustrates the influence of natural and economic conditions on the shaping of legal doctrine.

This tribute must not be closed without a brief reference to other than the professional and public aspects of Judge Shaw's career. Beyond and above the admiration and respect evoked by his distinguished service as lawyer and judge, he deserved and had the esteem and affection of all who knew him for his rare attributes as a man. Those who had the privilege of association with him during the years of his activity as a Justice of the Supreme Court quickly learned to know and to value his high qualities. His guiding motive was the performance of duty. In the decision of a cause his mind harbored no thought of person or of any other than the right of the controversy. His sole purpose was to reach a just result, in accordance with sound legal principle. His industry was unflagging, and when he presented a draft of an opinion to his colleagues, they could feel assured that the facts and the legal questions involved had been thoroughly mastered and fairly stated by

him. He was always ready to pause in his own labors to aid an associate in the solution of a troublesome problem.

Able, conscientious, courageous, honorable in every relation of life, simple and unaffected, he exemplified in his public and in his private life the best traditions of American manhood and citizenship.

Mr. Chief Justice Waste then responded as follows, thanking the Committee, and Judge Myers as its Chairman:

So much has been said, and so splendidly said, by the Committee charged with preparing and presenting to the court the memorial of the life, character, and services of its former Chief Justice, Honorable Lucien Shaw, that little need be said in supplementing a formal order for the reception and filing of the Committee's report.

Judge Shaw lived a long time in the State that now honors his memory. Though he was not a native son of California, he was proud of his citizenship in this, his adopted, state. A veteran of long judicial service, ripe in accumulated years, and profound in wisdom, he voluntarily laid aside the burden of official duties and retired to his peaceful home to abide a time before passing to his eternal rest. A great commonwealth remains the beneficiary of his activities.

Of the Justices presently constituting the Supreme Court, only the Chief Justice was a member of the Court when Judge Shaw was Chief Justice. It was an inspiration to be associated with and serve under such a leader. He was an earnest and sincere student, seeking to know and interpret the law with naught but absolute justice in view. He was possessed of a great knowledge of the fundamentals of law and equity and versed in rules of interpretation. He had a keen sense of human tendencies and limitations and was himself direct and sincere. His honesty of character and purpose was of the robust kind. He expected and appreciated directness and sincerity in others. Sham and hypocrisy were never part of his personalty and he despised them in others.

Reference has been made to the contribution Judge Shaw made to California in the long line of opinions he wrote dealing with important questions involving water, its owner-

ship and uses—one of the most vital questions to the people of the West. While these decisions are notable for their effect in their particular line, Judge Shaw's reputation as a jurist will rest, as well, upon the long list of many other important questions he considered while a member of the Supreme Court, and to which he directed his consideration in the decisions of which he was the author.

While one who served on the Court with Judge Shaw may have had a closer association with him than was enjoyed by the other Justices, all knew him intimately and all join with Bench and Bar in paying tribute to an outstanding citizen whose distinguished services add luster and renown to the judicial history of California.